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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/607,313	06/28/2000	Brad Baker	30687-US	6871

5179 7590 02/09/2005

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EXAMINER
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TRAN LIEN, THUY

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 02/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/607,313

Applicant(s)

BAKER, BRAD

Examiner

Lien T Tran

Art Unit

1761

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 03 January 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 29-31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 29-31 is/are rejected.
- 7) ☐ Claim(s) 29 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

Claim 31 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

In the amendment filed 1/3/2005, applicant added new claim 31 which recites that the handle portion is edible. This limitation is not supported by the original disclosure. The specification does not disclose that the handle portion is edible. Page 15 lines 25-29 discloses the manufacturing process of the non-edible portion of the paintbrush. The same disclosure is found on page 18. There is no disclosure of edible handle portion.

Figure 14 is disclosed in the specification as containing three figures ( 14a, 14b,14c); however, the drawing does not provide separate labeling of the figures. Correction is requested.

In the board decision mailed on August 31, 2004, the 103 rejection was reversed on the ground that the rejection did not have teaching of the claimed holder attached to the container. A new reference will be used to cure such deficiency. The rejection is as followed.

Claims 29 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over the brochure on " Paint Pop" product in view of Nickels, Gramlich and Kern.

The brochure discloses Paint Pop which comprises candy in the shape of a paint roller, a packet comprising candy powder and a paint tray. The candy powder is

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emptied into the paint tray and the candy is rolled in the paint tray for consumption. The candy has a non-edible handle portion and an edible portion attached to the handle.

Gramlich discloses a wet paint and roller storage unit in which the tray has a lid so that the painter does not have to transfer the paint back into the can when he/she stops. When the painter wants to resume painting, he/she will merely have to open the lid and resume painting. (See col. 3)

Kern discloses a roller tray with cover thereon for protecting material in the tray against drying out so that the cover may be hinged open for a painting shift and may be hinged closed on the tray between shifts to avoid drying out of the material in the tray. (See col.1 lines 55-61)

Nickels disclose a paint can having a paint brush holder attached to the paint can through a member. The paint brush holder is the cup (16) which holds a paint brush therein. The cup 16 is received in member (10) and the member 10 is affixed to a paint can through post (32). (see columns 3-4)

The claimed product differs from the prior art product in the shape. Applicant is moving from one conventional design shape to another conventional design shape. A paint tray, a paint can, a paint brush and a paint roller are all conventional shapes. To change from one conventional shape to another conventional shape would have been obvious to one skilled in the art because such shapes are all well known in the art. Nickel shows a paint can and paint brush combination. As to the inclusion of a lid, it would have been obvious for one to include a lid on the paint tray of the Paint Pop product or on a paint can to prevent the content inside the container from falling out.

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While the Nickel product does not show a lid, it is obvious to include a lid in such paint can because it is notoriously well known in the art to include a lid on paint can to prevent the product from falling out. One can readily see this on any paint can in the paint store. If the paint is inside a paint tray, it would have been obvious to include a lid in accordance with the teaching of the prior art to Gramlich and Kern. Gramlick and Kern teach to include a lid on a paint tray so that the material in the tray will not dry out and that the painter does not have to transfer the paint back to the can when he/she temporarily stops painting. The Paint Pop is an adaption of a real inedible product into an edible product to provide novelty. Thus, it would have been obvious to one skilled in the art to also adopt the teaching of Gramlick and Kern to provide a parallel function to a painter. The lid will enable the consumer to protect the roller candy and the powder candy from drying out or spilling when the consumer wants to take a break from eating and he/she can simply open the lid when consumption is resumed. The lid will also protect the roller and powder packet from falling out before consumption. As to the having a holder for holding a paint brush which is connected through a member attached to the container, such configuration is known as shown by Nickels. When an adaptation of an inedible product to an edible is made, it would have been obvious to incorporate all features of the inedible product to obtain a parallel function. The inclusion of a brush holder is advantageous in that the painter can rest the brush without worrying about dripping of the paint on other places or contamination of the paint brush with other material. Such advantage also applies to a candy product having the same configuration.

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Claim 31 is free of prior art because there is no disclosure in the prior art to make the handle to be edible and there is no suggestion to do so.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T Tran whose telephone number is 571-272-1408.

The examiner can normally be reached on Wed-Fri.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

February 4, 2005

  
LIEN TRAN  
PRIMARY EXAMINER  
